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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 329

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CABOT CARBON COMPANY AND CABOT CARBON SHOPS, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 95) is reported at 256 F. 2d 281. The findings of fact, conclusions of law and order of the National Labor Relations Board (R. 89–145, 156–162) [1] are reported at 117 N. L. R. B. 1633.

JURISDICTION

The judgment of the court below was entered on June 9, 1958 (R. 109). The petition for a writ of

[1] References to the transcript of record in the court below, which is Vol. I of the Record before this Court, are designated "R." References to the joint appendix filed in that court, here printed as Vols. II and III of the Record and separately paginated, are designated "RII" and "RIII."

certiorari was granted on October 20, 1958 (R. 110). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether employee committees maintained by an employer for the purpose of meeting regularly with management and discussing problems of mutual interest, including employee grievances in non-union plants and departments—and which in practice have discussed, complained about, and made recommendations concerning, seniority and transfer of employees, improvement of working facilities, vacations, sick leave and various other matters affecting employment—are labor organizations within the meaning of Section 2 (5) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*) are as follows:

DEFINITIONS

SEC. 2. When used in this Act—

* * * * *

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

The relevant provision of the original National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449) is as follows:

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

STATEMENT

I. THE BOARD'S FINDING OF FACTS

A. FORMATION OF THE EMPLOYEE COMMITTEES DURING WORLD WAR II

Cabot Carbon Company and Cabot Shops, Inc. are subsidiary corporations of Godfrey L. Cabot, Inc. and operate within the Southwestern Division of the parent corporation (R. 44; RII. 181, 263–264). They are referred to jointly as Cabot.

During World War II the War Production Board encouraged critical war industries, including Cabot, to set up joint "labor-management committees" as part of the war effort to promote increased production and efficiency (R. 47; RII. 206, 216–217, 256–257; RIII. 898). Accordingly, in 1943, pursuant to instructions

from Reno Stinson, Cabot's Director of Industrial Relations, employee representatives from each of Cabot's plants were elected and held a conference with Stinson at Pampa, Texas, for the purpose of drafting by-laws for employee committees which were to be established at each of the plants (R. 47–48; RII. 196, 206–208, 218; RIII. 898–899). These by-laws, drafted with the assistance of Director Stinson, were thereafter approved by the employees and local management at all the plants and a copy was sent to the War Production Board (R. 48; RII. 206, 259–260; RIII. 900–901).

As contemplated by the by-laws, an Employee Committee was elected at each of Cabot Carbon Company's approximately 16 plants or installations and at each of the 2 plants of Cabot Shops, Inc. (R. 47, 51; RII. 11, 182–183, 196). The Committees have no formal organization. There are no membership requirements, no dues and no officers. The Committees have no funds and rely upon clerical assistance and other facilities furnished by Cabot when necessary for their activities and functions (R. 51, 62; RII. 152, 244; RIII. 518–519). Organization is limited to the election, annually, of committeemen and alternates (R. 51; RII. 152). Outgoing Committee members conduct the nomination and election of succeeding Committee members with the help of the plant clerk (R. 61; RII. 155, 429–431; RIII. 895). The Committees meet with management at regular monthly meetings and attend any special meetings called by management (R. 47, 50; RII. 156).

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Although there is no provision in the by-laws for a "Central Committee", such a committee exists as a part of the employee representation plan. It is composed of the chairman of each plant Committee. It meets annually with top management in Cabot's Pampa, Texas office (R. 54–55; RII. 206–207, 243–244; RIII. 516–517, 907–908). Management defrays all the travel and other expenses connected with attendance at such meetings (R. 55; RII. 244).

B. PURPOSES AND FUNCTIONS OF THE COMMITTEES AS STATED IN CABOT'S POLICY MANUAL AND EMPLOYEE HANDBOOK

After the war, the Committee by-laws were included and published in the "Cabot Guide", a company-wide policy manual (R. 48; RII 152–167, 204–205, 208). These by-laws, except for minor revisions, are still in effect and are recognized as a part of company policy (R. 48; RII. 200–202; RIII. 665–666, 929–930). Cabot also issues an employee handbook entitled "You And Your Job With Cabot" which is presented to each regular employee (R. 47; RII. 4–9, 191–192, 288, 319–320, 374).

In the handbook the employee is informed, *inter alia,* (R. 47; RII. 4):

> At each plant, department, and in the Pampa Office, there is an Employee Committee. Employee Committees handle employee grievances at non-union plants and departments and make recomendations on suggestions from employees in accordance with the Suggestion Plan.

The Suggestion Plan is described in the "Cabot Guide" (R. 52; RII. 157–159). This Plan provides for cash awards to employees selected by the Employee

Committees and plant management for valuable and meritorious suggestions with respect to various matters, including "Ideas for eliminating a safety hazard or improving working conditions" (R. 52, n. 6; RII. 159).

The Committee by-laws, as set forth in the "Cabot Guide", provide that the purposes of the Committee are to bring about a better understanding between employees and management and to provide a definite procedure for considering employees' ideas with respect to problems of mutual interest, such as, for example, safety, increased efficiency in production, conservation of supplies, materials and equipment, encouragement of ingenuity and initiative, and grievances in non-union plants or departments (R. 48, 51; RII. 152).

The "Guide", in addition to incorporating the Committees' by-laws, sets forth a seniority policy for non-union plants and departments and provides that seniority lists shall be furnished the Committees and that any deviations from those lists shall be discussed with the Committees. If the Committees are dissatisfied with Cabot's explanation for the deviations, they may file grievances under the regular grievance procedure prescribed in the policy manual (R. 52–53; RII. 162–167). That grievance procedure provides that in non-union plants and departments the aggrieved employee may handle his grievance personally or through the Employee Committee; that if he handles the grievance through the Committee, it shall be the Committee's duty to consult with supervisory personnel, consider all the evidence, weigh the facts, and

set out in writing its reason for believing the grievance has merit before filing a formal grievance with management (R. 52–53; RII. 160–162).

The by-laws further provide, under a heading entitled "Rights and Duties of Committees", that the Committees do not in any way detract from the authority and responsibility of management but should assist management in general "in solving problems of mutual interest." They provide that the Committees shall meet at regular monthly and special meetings called by management; work with management on those problems of mutual interest set out under "Purposes"; make recommendations on employee suggestions submitted under Cabot's Suggestion Plan; handle grievances at non-union plants and departments according to Cabot's established grievance procedure; report trouble-makers or acts of disturbance which would tend to lower morale; and insist that gripes, grumbling or trouble-making among the employees stop or be taken up through the grievance procedure (R. 50–51; RII. 156–157).[2]

C. THE COMMITTEES IN OPERATION AFTER OCTOBER 1954

The employee representation system was not discontinued after the cessation of World War II hostilities in 1945. Instead, an additional Committee was

[2] Copies of the "Guide" are distributed to plant superintendents and higher Cabot officials and are made available in each plant office (RII. 205). Those portions of the "Guide" pertaining to the Committee's by-laws, the Suggestion Plan, grievances and seniority, however, are furnished to each committeeman (RII. 208).

set up for each new plant acquired by Cabot (R. 51, 56; RII. 208, 305–306; RIII. 901–902).

The Committees, in addition to discussing with management problems concerning plant production and efficiency, dealt with it concerning a wide variety of other matters. Thus, during the period covered by the complaint—between October 1954 and the date of the hearing before the Board in 1956—the Employee Committees discussed, complained about, made requests and recommendations, or otherwise dealt with Cabot, with respect to seniority and transfer of employees, job classifications, job bidding, improvement of working facilities, overtime records and time cards, the merit system, layoff and makeup time, working schedules, vacation and sick leave, holidays, allocation of company houses, and other matters affecting their employment (R. 53–55, 59; RII. 19–39, 42–43, 45, 48, 50–57, 90, 92–96, 99, 101–110, 112, 114–115, 118–119, 122–142, 339–359, 469–475; RIII. 477–483, 555, 570–577, 635–650, 707–708, 743, 762, 779–780, 803–824, 826–832, 841–844). And while management did not accede to all requests, it frequently acted on complaints or decisions made by the Committees. Thus, among other things, management agreed to change from a company to a plant seniority system in several plants where employees desired the change (RII. 19–20, 83, 342–343, 357, 469–470; RIII. 480); to install vents for tops of warehouses (RII. 35, 471–472; RIII. 482); to provide longer notice periods for jobs up for bid (RIII. 744); to furnish gloves at cost (RII. 35, 477–479); to permit employees to report early and leave early on weekends (RII. 109; RIII. 804–807); and to establish

an annual basis for allocating overtime (RIII, 760–763). A more detailed description of how the various subjects of discussion were handled by the Committees and management is set forth in an Appendix to this brief, *infra*, pp. 42–46.

The Central Committee at its 1955 and 1956 annual meetings with Cabot's Director of Industrial Relations, Stinson, and other management representatives made proposals, requests or complaints and had discussions with respect to matters similar to those handled by the plant Committees. These subjects included: the advisability of continuing Cabot's Suggestion Plan in view of its incentive award system (RII. 58–59, 73–76); proposed changes in the operation of the Credit Union at Cabot plants (RII. 61–65); a three week vacation for employees with ten years' service (RII. 65); annual sick leave and sick or disability benefits (RII. 65–67, 77–80); whether Cabot could set an example for its competitors in establishing benefit plans (RII. 67–68, 77–78); the practice of working on holidays (RII. 68); Cabot's contribution to the expense of an Employee Educational Program (RII. 68–69, 85–86); the granting of leaves of absence for employees wishing to attend college (RII. 69); the furnishing of work gloves to employees by Cabot or, in the alternative, Cabot's purchase of such gloves at wholesale rates and sale to employees at cost (RII. 69–70; RIII. 587); whether company houses should be distributed on the basis of job or seniority (RII. 80–81); whether shift men should be permitted to make up for days lost from work (RII. 81); requests for the creation of more job classifications, with resulting

higher wages for those jobs in certain plants, and for greater uniformity among the different plants in maintaining job classifications (RII. 81–82); more opportunities for employees to transfer from plant to plant or to different departments (RII. 82–84); request that Cabot compensate employees for losses in pay incurred while attending National Guard camps (RII. 84); whether employees who refuse to take new jobs or assignments should be laid off (RII. 84–85); whether means of notifying employees on night shifts of telephone calls could be arranged (RII. 85); whether length of work day for shift workers should be same as those for the gang with which they work (RII. 86–87); request that bathing time and either a higher wage or an allotment for clothes be allowed sandblasters and painters (RII. 87); and a request for general wage increases (RII. 87–88).

With respect to each of the proposals, requests or complaints made by the committeemen at these Central Committee meetings, Director Stinson explained Cabot's practice or policy, discussed whether or not acceding to the proposals or requests would be feasible or economically permissible from Cabot's point of view and sought to reach some solution (RII. 58–88). In some instances Stinson, or some other management representative, expressed approval of the committeemen's suggestions or promised to see what could be done about remedying the situation complained about (RII. 59, 68, 69–70, 80, 81, 82). In other instances the management representative suggested that the committeeman take the matter up with

local management (RII. 82, 85, 87). In still other instances, he expressed disagreement with the requests or proposals, explaining his reasons for doing so (RII. 62–63, 65–67, 68, 77–80, 82–84, 85, 88).

While the Employee Committees, including the Central Committee, have never attempted to negotiate a contract, the dealings between them and management have provided, as the Board found, "a forum for discussion of mutual problems, exchanges of information, presentation and consideration of employee suggestions and recommendations, including the adjustment of grievances and the improvement of working conditions" (R. 55).

At 7 of Cabot's 16 plants or installations outside unions have been certified by the Board (R. 45–46, 54–55, 64, n. 11; RII. 11, 182–183, 211–212).[3] The Committees have coexisted with these certified unions, though not always without friction (R. 54–55; RII. 210, 211, 253; RIII. 876). Their functions under such coexistence have generally been limited to the handling of grievances for employees outside the bargaining unit and to matters such as plant efficiency and production problems (R. 54; RII. 228–229, 401, 405–407, 419; RIII. 513–514, 873). Nevertheless, as

[3] The International Chemical Workers Union, AFL–CIO, which filed the unfair labor practice charges in this case, has been the duly certified and recognized bargaining representative of the production employees at the Ville Platte plant since 1946 and at the Canal Plant since December 1955 (R. 45, 64, n. 11; RII. 178, 398, 404). Other labor organizations have been certified and recognized at the Pampa Plant, the Schafer A Plant, the Schafer B Plant and at both plants of Cabot Shops, Inc. (R. 46; RII. 211; RIII. 783, 872–873).

late as March 3, 1955, the Employee Committee at the Ville Platte plant discussed with management the installation of water coolers in the warehouses for the convenience of employees and the improvement of employee facilities on the docks. Management undertook to alleviate the conditions complained of (R. 54–55; RII. 91–92).

In the event of conflict, the Employee Committees have customarily yielded to the certified bargaining representative (R. 54; RIII. 514). And because of such a conflict, no members were elected to the Employee Committees at either the Ville Platte plant or the Canal plant in 1956 (R. 55; RII. 398–399, 454–455, 458; RIII. 475–477, 894–895, 938–939).[4] At some of the unionized plants, representatives on the Committees are also members of the certified union and at one plant representatives of the Committee and of the certified union hold joint meetings with management (R. 55; RII. 420–421; RIII. 493, 792–795, 876). In recognition of the conflict between the Committees and certified unions, Director Stinson reported at the

[4] Cabot's Director of Industrial Relations, Stinson, explained the discontinuance of the Committee at Ville Platte as follows (RII. 211–212):

> They just neglected electing a committee there and in the light of this Complaint * * * the superintendent up there told me he thought the union didn't want us to have the employee committee and personally he didn't see why both committees (Employee Committee and Union's Committee) should do the same job so they just didn't elect any. So the two committees have been turned over to the union at the two plants where the Chemical Workers represent the employees.

March 21, 1956, meeting of the Central Committee that "There has been some discussion for several years in regard to having both an Employee Committee and a Union Committee at a Union plant," and he expressed uncertainty as to whether Employee Committees in unionized plants would be continued during the succeeding year (RII. 72). He reported that management at the Canal and Ville Platte plants had suggested that Union committee chairmen be sent to Central Committee meetings and that Union meetings be permitted to handle the Suggestion Plan (RII. 72). Several Union committeemen did, in fact, attend the 1956 Central Committee meeting (RII. 70–71).

II. THE BOARD'S CONCLUSION AND ORDER

On the basis of the foregoing facts, the Board concluded that the Committees are labor organizations within the meaning of Sec. 2 (5) of the Act (R. 58–60, 82). It found that Cabot had dominated and interfered with the administration of the Committees and furnished assistance and support to them, in violation of Section 8 (a) (2) and (1), of the Act (R. 60–62, 82).

The Board's order accordingly requires Cabot to cease and desist from the unfair labor practices found; to withhold all recognition from the Committees as the representative of any of its employees for the purpose of dealing with Cabot concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of work; to disestablish them completely as such representatives and to post appropriate notices (R. 82–83).

III. THE DECISION OF THE COURT BELOW

The court below (R. 96) accepted the Board's determination that Cabot had interfered with, assisted and supported the Committees, but it found no violation of the statute because in its view the Committees are not labor organizations within the meaning of Sections 2 (5) and 8 (a) (2) of the Act.

The court acknowledged that the Committees "have discussed, complained about or made recommendations concerning" subjects covering virtually every aspect of the employment relationship (R. 99). It held, however, that "a group of employees is not a labor organization unless it exists for the purpose of negotiating or bargaining with employers" and that the Committees did not exist for that purpose (R. 101). In reaching this conclusion, the court interpreted the term "dealing with" as used in Section 2 (5), which defines a labor organization as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances," etc., to mean more than "discussing with," and as being synonymous with "negotiating or bargaining" (R. 101).

This interpretation, the court stated (R. 101–106), was buttressed by Section 9 (a) of the Act, which recognizes the right of "any individual or group of employees" to present grievances to their employer, and the legislative history of that provision. In the court's view, Congress' failure, in amending the Act

in 1947, to adopt a proposal in the House bill which would have permitted employers to form and maintain employee-management committees similar to the Committees here involved, where no certified or recognized bargaining representative existed, should not be construed as a rejection of the proposal in principle. The court believed that Congress in effect approved that proposal, and excepted such organizations from the statutory definition of labor organization, when it added to Section 9 (a)—the majority rule provision of the Act—provisos which recognized the right of any employee or group of employees to present grievances to their employer and have the grievances adjusted without the intervention of a bargaining representative so long as the adjustment is not inconsistent with the terms of a collective bargaining agreement and the bargaining representative has been given an opportunity to be present at the adjustment.

SUMMARY OF ARGUMENT

A. Tested by the bare words of Section 2 (5) of the statute, which defines a "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work", the Employee Committees are labor organizations within the purview of the statute. Thus, the employees participate in the Committees through elected representatives. And the Committees exist, at least in part, for the

purpose of "dealing" with Cabot concerning grievances and working conditions, as shown by the Committees' by-laws and other printed matter published by Cabot in its policy manual and employees' handbook and by the manner in which the Committees have actually functioned.

B, The legislative history of the Wagner Act shows that Congress deliberately defined the term "labor organization" very broadly in order to include all organizations of employees whether they merely "deal" or "bargain collectively" with employers in regard to grievances or working conditions. This is made clear not only by the Senate Report on the bill which was enacted, but also by the evolution of Section 2 (5) while under legislative consideration.

Thus the definition of "labor organization" did not originally include "employee representation committee or plan." Those words were added after Congress was advised that such committees or plans, which might not be regarded as conventional labor organizations, nevertheless constituted "the most prevalent form of company union" (1 Leg. Hist. (1935) 271–272). The definition was broadened to include such organizations so that now "an employer is now not permitted to organize a shop committee to present grievances on questions of safety and other minor matters even though he does not use such shop committee as a subterfuge for collective bargaining on the essential points of wages and hours" (1 Leg. Hist. (1935) 1320). Moreover, although Congress adopted a proposal by the then Secretary of Labor that the words "or conditions of work" be added to the end

of the proposed definition, it rejected the further suggestion that the definition be narrowed to include only those organizations which exist for the purpose of "bargaining with" employers rather than merely "dealing" with them.

The purpose of the comprehensive statutory definition was to reach every variety of employee representation committee or plan, because where they are employer dominated or supported, they "may be a ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 266, 269.

This and other courts have uniformly held employee representation committees, and plans similar to those here involved, to be labor organizations within the meaning of the original statute.

C. Congress in 1947 reenacted without change the broad definition of "labor organization" contained in Section 2 (5) and the proscription against employer domination or support of labor organizations embodied in Section 8 (2) of the original Act. Congress did not, by amending the Act in other respects, inferentially amend the definition of labor organization or remove any type of labor organization from the proscription of Section 8 (a) (2).

The holding of the court below that Congress, although not adopting, nevertheless approved in principle, a proposed Section 8 (d) (3) in the House bill which would have permitted an employer to form and maintain employee committees and to discuss with

them matters of mutual interest, including grievances and subjects within the field of collective bargaining, where no recognized or certified bargaining representative exists, finds no support in the language of the statute or in its legislative history. The Conference Committee, in explaining the failure to adopt the proposed Section 8 (d) (3), stated that the Act, "by its terms permits individual employees and groups of employees to meet with the employer and section 9 (a) of the conference agreement permits employers to answer their grievances" (1 Leg. Hist. (1947) 549). The Conference Committee thus noted that Section 8 (d) (3) had been rejected because it was not needed to safeguard the right of individual employees and groups of employees to meet with their employer and discuss matters of mutual interest since that right is adequately protected elsewhere in the Act. Under Section 7 and Section 8 the employees were already free—where no exclusive bargaining representative existed—to meet with their employer, individually or in groups, organized or unorganized, and discuss with him matters of mutual interest, including subjects within the area of collective bargaining. And where an exclusive bargaining representative existed, the employees were permitted, under the provisos to Section 9 (a) of the Act as amended, to meet with their employer individually or in groups to present grievances and the employer was permitted to answer their grievances independently of the bargaining agent, subject to the latter's right to be present for the purpose of protecting the bargaining contract or the interests of the unit as a whole. In these circumstances the

only permissible inference is that Congress intended no change in the statutory definition of labor organization even by implication.

Finally, there is no basis in any of the Taft-Hartley amendments or in their legislative history for the view of the court below that the word "dealing" as used in Section 2 (5) should now be construed to mean "bargaining collectively" and that an employer dominated and supported committee which does not bargain collectively with the employer is permissible under Section 8 (a) (2). On the contrary, Congress not only specifically rejected all attempts to amend Section 8 (2) of the original Act and left its prohibitions unchanged, but also disclaimed any intention to amend the statutory definition of labor organization which was carried over from the Wagner Act to the Taft-Hartley Act.

Courts of appeals in four circuits, in interpreting the statute subsequent to the Taft-Hartley amendments, have held it applied to committees similar to those here involved.

ARGUMENT

The Board's finding that Cabot dominated and interfered with the administration of the Employee Committees, including the Central Committee, and contributed support to them, was not contested in the court below or in the brief in opposition. This conduct, it must be conceded, was in violation of Section 8 (a) (2) of the Act if those Committees are labor organizations, for that section makes it an unfair labor practice for an employer "to dominate or interfere with the * * * administration of any labor

organization or contribute financial or other support to it." The sole issue before this Court, therefore, is whether the Committees are labor organizations within the meaning of the statute. The court below concluded that they were not such organizations because they did not exist for the purpose of "negotiating or bargaining" but merely served as a forum for discussion of subject matters relating to the employment relationship. The artificial distinction thus drawn by the court finds no support in the statute itself, its legislative background or in the decided cases. On the contrary, as we show below, these Committees fall squarely within the definition of "labor organization" set forth in Section 2 (5) of the Act and the legislative history of the Act supports that reading.

I. THE COMMITTEES FALL SQUARELY WITHIN THE DEFINITION OF "LABOR ORGANIZATION" SET FORTH IN SECTION 2 (5) OF THE ACT

The term "labor organization" is defined in Section 2 (5) of the statute as—

> * * * any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Committees at the various Cabot plants and installations and the Central Committee clearly fall within the literal language of this statutory definition. Thus, the employees "participate" in the Committees

through their elected representatives who meet with local plant management at regular monthly and special meetings called by management and through the Committee chairmen who meet annually with Cabot's top management at Pampa, Texas. The Committees, moreover, in any literal sense of the word, exist for the purpose of—and actually engaged in—"dealing" with management concerning "grievances" and "conditions of work" (*supra*, pp. 6–13 and Appendix, *infra*, pp. 42–46).[8] The Committee by-laws and other printed matter published by Cabot in its policy manual and in its employee handbook describe the purposes and duties of the Committees as including assistance to management "in solving problems of mutual interest" and the handling of employee grievances and seniority problems in non-union plants and departments. These publications do not purport to describe fully or to reflect the actual purposes and functions of the Committees including the Central Committee which, as shown in the Statement, *supra*, pp. 6, 10–12, constitutes an important part of the Committee structure.

The purpose for which these Committees existed is most clearly manifested by the manner in which they

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[8] Funk & Wagnalls, New Standard Dictionary of the English Language (1952): "deal: To have business relations, mutual intercourse, or dealings with a person, or be interested in the buying or selling of something." Webster's New International Dictionary (2d ed.): "deal:

III. To act in mutual relations:

8. To have intercourse or dealings (with) * * *

9. To act as an intermediary in business or any affairs; to make arrangements; to negotiate * * *."

functioned as recorded in the minutes of their meetings and described in the testimony of those who attended. As already indicated, the minutes and testimony reveal that the employee representatives in their meetings with management discussed, complained about, made requests and recommendations or otherwise dealt with their respective employers with respect to, seniority and transfer of employees, job classifications, job bidding, improvement of working facilities, overtime records and time cards, the merit system, layoff and makeup time, working schedules, vacation and sick leave, holidays, allocation of company houses, a general wage increase and other matters affecting their employment. In short, although the Committees did not attempt to negotiate any formal contracts, the meetings between them and the Company covered virtually every phase of the employment relationship, with the former making proposals and requests and the latter accepting some and rejecting others. Thus all terms in the definition are clearly met by these Committees.

II. THE LEGISLATIVE HISTORY OF THE STATUTE SHOWS THAT CONGRESS MEANT TO EMBRACE WITHIN THE DEFINITION OF LABOR ORGANIZATION COMMITTEES OF THE TYPE HERE INVOLVED

A. THE 1935 LEGISLATIVE HISTORY

Both Section 2 (5), defining the term "labor organization," and Section 8 (2), making it an unfair labor practice for an employer to dominate or support a labor organization, of the Wagner Act were reenacted without change in the corresponding Sections 2 (5) and 8 (a) (2) of the Taft-Hartley Act. The legisla-

tive history of these sections at the time of their first enactment therefore furnishes the most reliable guide as to their present meaning.

Congress, as this history establishes, deliberately defined the term "labor organization" "very broadly in order that the independence of action guaranteed by section 7 of the bill and protected by section 8 shall extend to all organizations of employees that deal with employers in regard to 'grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.' This definition includes employee-representation committees and plans in order that the employers' activities in connection therewith shall be equally subject to the application of section 8."[6] The reach of the comprehensive statutory definition and the considerations which prompted its adoption are made clear not only by the quoted statement from the Senate Report but they are also underscored by a comparison of the drafts of the 1934 and 1935 bills (S. 2926 and S. 1958) introduced by Senator Wagner and by the amendments and proposed amendments to those drafts.[7]

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[6] S. Rep. No. 573 on S. 1958, 74th Cong., 1st Sess., p. 7, reprinted in 2 Legislative History of the National Labor Relations Act, 1935 (Govt. Print. Off., 1935), p. 2306. The latter publication will hereinafter be referred to as "Leg. Hist. (1935)."

[7] This comparison and some of the proposed amendments are set forth in a Senate Committee Print, 74th Cong., 1st Sess., entitled "National Labor Relations Board, Comparison of S. 2926, Seventy-Third Congress and S. 1958, Seventy-Fourth Congress, and Proposed Amendments", printed for the use of the Committee on Education and Labor (Govt. Print. Off., 1935). This document is reprinted in 1 Leg. Hist. (1935) 1319–1371.

The original Senate print of the 1934 bill (S. 2926) defined the term "labor organization" as "any organization, labor union, association, corporation, or society of any kind in which employees participate to any degree whatsoever, which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, or hours of employment" (1 Leg. Hist. (1935) 2). During the hearings on this bill, Edwin E. Witte, Professor of Economics, University of Wisconsin, questioned whether the definition as then written "covers the situation that is most prevalent in this whole field of company unionism, that loose organization, if you can call it an organization, that has no members, no dues, that is merely a method of electing representatives * * * known as the 'employee representation' committee, which is the most prevalent form of company union" (*id.*, at 271–272). At Senator Wagner's prompting, he proposed that the definition be amended to include the "employee representation committee" (*id.*, at 272).

The final version of the 1934 bill (S. 2926 as reported, 2d Senate print) contained the revision suggested by Professor Witte. It defined "labor organization" as "any organization or any agency or employee representation committee, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning hours of labor, wages or working conditions" (1 Leg. Hist. (1935) 1086).

The original Senate print of the 1935 bill (S. 1958), however, broadened this definition to include "any organization *of any kind,* or any agency or employee

representation committee *or plan* in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning *grievances, labor disputes,* wages, rates of pay, or hours of employment" (italicized words added in this draft) (1 Leg. Hist. (1935) 1296). Miss Frances Perkins, then Secretary of Labor, proposed that the latter definition be amended by substituting for "dealing" the words "bargaining collectively" and by adding to the end of the proposed definition the words "or conditions of work."[8] In the second print of S. 1958, which contains the definition of labor organization as finally enacted, the Senate added the words "or conditions of work" to the proposed definition but did not adopt the Secretary's proposal that "dealing" be changed to "bargaining collectively" (2 Leg. Hist. (1935) 2287). It would thus appear that the broader term "dealing" was deliberately retained to avoid any limiting effect which the phrase "bargaining collectively" might otherwise have implied.

The significance of the broad language appearing in the later and final drafts of the proposed definition is explained in memoranda prepared for the use of the Senate Committee.[9] Thus, in a memorandum dated March 11, 1935, comparing the 1935 bill with the 1934 bill it is pointed out (1 Leg. Hist. (1935) 1320):

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[8] National Labor Relations Board, Hearings before the Committee on Education and Labor, U. S. Senate, March 12, 1935, 74th Cong., 1st Sess., on S. 1958, pp. 66, 67; 1 Leg. Hist. (1935) 1331, 1442, 1443.

[9] See n. 7, *supra*, p. 24.

> Last year the term "labor organization" was strictly limited to an organization which existed for the purpose of dealing with employers concerning hours, wages, or working conditions. This year the term "labor organization" has been broadened in the bill to include an organization that deals with employers concerning grievances as well as wages, rates of pay or hours of employment. The importance of this is that an employer is now not permitted to organize a shop committee to present grievances on questions of safety and other minor matters even though he does not use such shop committee as a subterfuge for collective bargaining on the essential points of wages and hours. In other words, the present draft is intended to outlaw certain types of personal administration commonly used by employers and not hitherto felt to be obnoxious.

In a further analysis and comparison of the two drafts, S. 2926 and S. 1958, the Senate Committee was advised (1 Leg. Hist. (1935) 1347):

> Section 2 (5): The two drafts are substantially identical except that S. 1958 includes the term "plan" for obvious reasons. It has been argued frequently by employers as well as by protagonists of the bill last year that an employee representation plan or committee arrangement is not a labor organization or a union but simply a method of contact between employers and employees. But the act is entitled to prescribe its own definitions of labor organizations, for its own purposes, and it is clear that unless these plans, etc., are included in the defi-

nition, whether they merely "deal" or "adjust," or exist for the purpose of collective bargaining, most of the activity of employers in connection therewith which we are seeking to outlaw would fall outside the scope of the act. The act would thus be entirely nullified. If, as employers insist, such "plans," etc., are lawful representatives of employees, then employer activity relative to them should clearly be included.

For like reasons, S. 1958 adds to the purposes for which labor organizations exist, "grievances," and "labor disputes," in addition to the traditional wages, hours, and working conditions. In most cases employee representation plans or committees are nothing but agencies for presenting and discussing grievances or other minor matters, and do not address themselves at all to the fundamental issues of collective bargaining agreements as to hours, wages, and basic working conditions. To exclude the term "grievances" particularly would exclude from the provisions of this act the vast field of employer interference with self-organization by way of such plans or committees.

It is evident from the foregoing that Congress did not intend to give the term "labor organization" the limited meaning which the court below adopted. On the contrary, as the comprehensive statutory definition and its legislative genesis demonstrates, Congress manifested an intention to reach beyond the conventional type of labor organization and include every variety of employee representation plans. Representation plans, like the Committees here, were the most preva-

lent form of "company unions" [10] and the original proposed definition of "labor organization" was enlarged for the very purpose of removing them from the industrial scene. See also S. Rep. No. 573 on S. 1958, 74th Cong., 1st Sess., pp. 10, 11, reprinted in 2 Leg. Hist. (1935) 2309, 2310; H. Rep. No. 969 on H. R. 7978, 74th Cong., 1st Sess., pp. 15–16, reprinted in 2 Leg. Hist. (1935) 2925–2926. To that end Congress outlawed all such representation committees, plans or schemes, where employer-dominated or supported, without regard to "whether they merely 'deal' or 'adjust', or exist for the purpose of collective bargaining * * *" in the conventional sense.[11] It broadly proscribed such organizations because they "may be a

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[10] U. S. Dept. of Labor, Bureau of Labor Statistics, *Characteristics of Company Unions*, 1935 (Govt. Print. Off., 1938) pp. 199, 204:

> The great majority of company unions were set up entirely by management. Management conceived the idea, developed the plan and initiated the organization.
>
> * * * * * *
>
> Considered from the standpoint of their functional pattern, company unions present a varying aspect. * * *
>
> At one extreme are a large number of company unions—more than half—which performed none of those functions which are usually embraced under the term "collective bargaining." Some of these were merely agencies for discussion. * * *
>
> Another group of company unions, about one-third, were undertaking only a few of the activities in which trade-unions normally engage. These company unions concerned themselves with individual grievances and some matters relating to working conditions; but broad questions of wages and hours, if they were discussed at all, had not been submitted to a process of negotiation and bargaining. * * *

[11] 1 Leg Hist. (1935) 1347.

ready and effective means of obstructing self-organization of employees and their choice of their own representatives for the purpose of collective bargaining." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 266, 269. This is true regardless of the "good motives" of the employer and despite the fact that he "has never objected to [his] employees joining labor unions." *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 248, 250–251.

In the light of these considerations, unless the 1947 amendments to the Act effected a change in the broad coverage of the statutory definition of labor organization, the Committees involved here are labor organizations within the meaning of the Act. The fact that the Committees did not attempt to negotiate a contract with the Company does not, as the legislative history clearly indicates, detract from the conclusion. Indeed, the fact that the dealings between such organizations and the employer seldom progress from discussion to negotiations and a formal contract covering terms and conditions of employment is often but a mark of impotence induced by the very fact of employer domination with which Congress sought to cope. *National Labor Relations Board* v. *James H. Matthews & Co.*, 156 F. 2d 706, 707 (C. A. 3).

Moreover, the circumstance that most of the Committees involved here may have been established during World War II, as the result a suggestion by the War Production Board that labor-management committees be created to increase plant production and efficiency, does not remove them from the coverage of

the Act nor immunize Cabot from the sanctions of the Act. Significantly, in making the suggestion, that agency advised the public that such committees were not to handle matters that fall within the area of collective bargaining.[12]

This and other courts have uniformly held, that employee representation committees or plans similar to those in this case are labor organizations within the meaning of the original statute.[13] We therefore turn

[12] The purpose of the employee-management committees suggested by the War Production Board "was to consider and improve all aspects of the production process which would tend to increase the quantity and quality of the products manufactured. According to the War Production Board instructions, the Committee was not to interfere with any bargaining machinery or undertake its functions." *National Labor Relations Board* v. *Kropp Forge Co.*, 178 F. 2d 822, 825 (C. A. 7), certiorari denied, 340 U. S. 810. Indeed, it was specifically stated in a brochure distributed by the War Production Board that "Grievances and collective bargaining matters will not be handled by the joint production committee, but will be referred to collective bargaining or other established machinery." *Kropp Forge Co.*, 68 N. L. R. B. 617, 631, quoting from *Labor Management News*, Vol. I, No. 4, dated August 16, 1943, the official weekly publication of War Production Drive, War Production Board, Washington, D. C. To the same effect, see: Frank S. McElroy and Alexander Moros, *Joint Production Committees, January 1948*, U. S. Department of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, Vol. 67, August 1948, pp. 123–124.

[13] See the following pre-Taft-Hartley cases: *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268–269; *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 246–248; *National Labor Relations Board* v. *James H. Matthews & Co.*, 156 F. 2d 706, 708 (C. A. 3); *National Labor Relations Board* v. *Precision Castings Co.*, 130 F. 2d 639, 641 (C. A. 6); *Wyman-Gordon Co.* v. *National Labor Relations Board*, 153 F. 2d 480,

to the question whether, as the court below thought, the 1947 amendments inferentially narrowed the scope of the statutory definition so as to remove such organizations from its reach.

B. THE AMENDED ACT EFFECTED NO CHANGE IN THE DEFINITION OF "LABOR ORGANIZATION"

As already noted, Congress in 1947 reenacted without change the broad definition of "labor organization" contained in Section 2 (5) and the proscription against employer domination or support of labor organizations embodied in Section 8 (2) of the original Act. The court below, however, held that certain amendments of another section of the Act—9 (a)—viewed in the light of legislative history rejecting a proposed new section, had the effect of amending the definition of labor organization as that term is used in Section 8 (a) (2) of the Taft-Hartley Act. This is an extraordinary twist for it imports into the statute a proposal which was specifically rejected. Moreover it overlooks the fact that Congress, in adopting the 1947 amendments, specifically disclaimed any intention to change the definition of labor organization or to relax the prohibitions of Section 8 (2).

The rejected new proposal referred to was Section 8 (d) (3), of the House bill,[14] which provided:

481–482 (C. A. 7); *National Labor Relations Board* v. *American Furnace Co.*, 158 F. 2d 376, 378 (C. A. 7); *National Labor Relations Board* v. *C. Nelson Mfg. Co.*, 120 F. 2d 444, 445 (C. A. 8), enforcing 15 N. L. R. B. 1051, 1072.

[14] H. R. 3020, 80th Cong., 1st Sess., April 18, 1947, p. 26, reprinted in Vol. 1, Legislative History of the Labor Management Relations Act, 1947 (Gov't Print. Off. 1948) 183. The latter publication will hereinafter be cited as "Leg. Hist. (1947)."

> (d) Notwithstanding any other provision of this section, the following shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act: * * *
>
> (3) Forming or maintaining by an employer of a committee of employees and discussing with it matters of mutual interest, including grievances, wages, hours of employment, and other working conditions, if the Board has not certified or the employer has not recognized a representative as their representative under section 9.

The reasons for the proposed amendment were explained in the House Report [15] as follows:

> Section 8 (d) (3): During World War II, many employers, with the help of the Government, set up labor-management committees, with which they discussed matters of mutual interest. This exception to section 8 (a) (2) permits employers whose employees have not designated a bargaining representative to set up similar committees and to discuss with them wages, hours, working conditions and other subjects of collective bargaining as well as other matters of mutual interest; *but an employer may discuss subjects of collective bargaining only if the employees do not have a certified representative or one that the employer currently recognizes as the exclusive representative of the employees.* This clause does not permit "company unions." The employer and the committee may discuss and reach decisions, but neither side may require the other to make an agreement, or to follow the procedure of col-

[15] H. Rep. No. 245, 80th Cong., 1st Sess., p. 33, reprinted in 1 Leg. Hist. (1947) 324.

lective bargaining set forth in section 2 (11). The employees generally may elect members of the committee, but section 8 (a) (1) and (2) forbid the employer to create a formal organization having members among employees generally or other common characteristics of a labor union.

The House bill had also proposed substantial changes in Section 8 (2) of the original Act.[16] The Senate amended the House bill (H. R. 3020) by substituting a bill of its own (S. 1126). 93 Cong. Rec. 6382; 1 Leg. Hist. (1947) 880. The Senate bill retained, without change, the identical language of Section 8 (2) of the Wagner Act and contained no provision corresponding to the proposed Section 8 (d) (3) of the House bill.[17] The Conference Committee adopted the proposal in the Senate bill. In explaining the failure to adopt the proposed Section 8 (d)

[16] Thus, it would have outlawed employer domination or interference with the formation or administration of a labor organization only when accomplished "(A) by preventing such organization from determining independently or out of the employer's presence its own policies or planning independently or out of the employer's presence its own objects and courses of action; or (B) by giving, or offering to give, any reward, favor, or other thing of value to any person in a position of trust in such organization for the purpose of perverting his judgment or corrupting his conduct in respect to such organization; or (C) by assisting any labor organization [through certain proscribed means]." H. R. 3020, as passed House, 80th Cong., 1st Sess., April 18, 1947, pp. 20–21, reprinted in 1 Leg. Hist. (1947) 177–178. See also H. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess., April 11, 1947, pp. 28–30, reprinted in 1 Leg. Hist. (1947) 319–321.

[17] S. 1126, as reported, 80th Cong., 1st Sess., April 17, 1947, pp. 11–12, reprinted in 1 Leg. Hist. (1947) 109–110.

(3) in the House bill, the Conference Committee stated:[18]

> Section 8 (d) (3) of the amended Labor Act in the House bill provided that nothing in the act was to be construed as prohibiting an employer from forming or maintaining a committee of employees and discussing with it matters of mutual interest, if the employees did not have a bargaining representative. This provision is omitted from the conference agreement since the act by its terms permits individual employees and groups of employees to meet with the employer and section 9 (a) of the conference agreement permits employers to answer their grievances.

The court below read this statement, coupled with Section 9 (a) of the Act as amended, to mean that Congress adopted, rather than rejected, as it did, the House proposal for employer sponsored and supported employee committees and thereby carved out an exception to the statutory definition of labor organization and the prohibitions of Section 8 (a) (2). This reading of the statute and its legislative history is untenable. The Conference Committee simply made clear that there was no need for such an exception, and accordingly it had not been adopted, because the statute otherwise adequately safeguarded the right of individual employees and groups of employees to meet with their employer and discuss matters of mutual interest. Thus, Section 7 assures to them "the right

[18] H. Conf. Rep. No. 510, on H. R. 3020, 80th Cong., 1st Sess., p. 45, reprinted in 1 Leg. Hist. (1947) 549.

to self-organization, to form * * * labor organizations, * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." And subsections (a) and (b) of Section 8 protect them against both employer and union interference with these rights. Moreover, Section 8 (a) (2) which outlaws employer support of a labor organization makes clear that it did not mean to prohibit an employer from permitting his employees to meet with him during working hours without loss of pay.[19] In view of these provisions, the employees were already permitted—where no exclusive bargaining representative existed—to meet with their employer, individually or in groups, organized or unorganized, and discuss with him matters of mutual interest, including matters in the field of collective bargaining. Section 9 (a) of the Act, as amended, confirmed the right of any employee or group of employees to meet with the employer to present grievances even where an exclusive bargaining representative has been designated.

Section 9 (a) is the majority rule provision of the Act. Its basic clause provides that the "representatives," if any, designated by a majority of the employees in an appropriate unit "shall be the exclusive representatives * * * in respect to rates of pay, wages, hours of employment, or other conditions of employ-

[19] This assurance is contained in the proviso to Section 8 (a) (2) which states: "That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

ment." This clause was qualified in the Wagner Act by a proviso which stated:

> *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

The Taft-Hartley Act added the following to the above proviso:

> and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further,* That the bargaining representative has been given opportunity to be present at such adjustment.

The provisos thus deal with the rights of an "individual employee or a group of employees" where an exclusive bargaining representative has been selected.[20] And they give assurance, as the legislative history shows,[21] that any individual employee or group of em-

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[20] In such cases, as this Court has held, the employer is precluded from negotiating with individuals and minority groups as to any subject matter within the field of collective bargaining. *Medo Photo Supply Corp.* v. *National Labor Relations Board*, 321 U. S. 678; *May Department Stores Co.* v. *National Labor Relations Board*, 326 U. S. 376, 383–384.

[21] The Senate Report explains that the amended Section 9 (a) "clarifies the right of individual employees or groups of employees to present grievances" by conferring with the employer "alone"—a matter concerning which the courts had disagreed—and to have the grievance adjusted independently of the bargaining representative so long as the latter has been given an opportunity to be present at the adjustment and the adjustment is not contrary to the terms of the collective bargaining agreement. Senate Report 105 on S. 1126, 80th Cong., 1st Sess., p. 24, reprinted in 1 Leg. Hist. (1947) 430. A similar

ployees continues to have the right to present grievances and have them adjusted independently of the bargaining representative, subject to the latter's right to be present at any adjustment to protect the bargaining contract or the interests of the whole unit.

Because of these safeguards and assurances, Congress deliberately rejected the House proposal which would have permitted employer sponsored and supported employee representation committees. The provisos do not deal with the question whether employee committees which exist for the purpose of presenting grievances to the employer or discussing with him matters relating to the employment relationship constitute labor organizations within the meaning of the Act. And there is no basis for inferring that the provisos were intended to permit an employer to maintain and support employee committees either for the purpose of handling grievances or discussing terms and conditions of employment."

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explanation is given in the House Conference Report No. 510 on H. R. 3020, 80th Cong., 1st Sess., p. 46, reprinted in 1 Leg. Hist. (1947) 550.

[11] The issue is not presented here, but it may be noted that where the employees have designated an exclusive bargaining representative, a minority union may not, in the Board's view, represent any of the employees even for the purpose of merely presenting their grievances (*Federal Telephone and Radio Co.*, 107 N. L. R. B. 649). This interpretation of Section 9 (a) has been upheld in *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69, 73 (C. A. 5). The Court of Appeals for the Second Circuit, however, in *Douds* v. *Local 1250, etc.* (*Oppenheim Collins & Co.*), 173 F. 2d 764, 772–773, held that the "group of employees" referred to in the first proviso to Section 9 (a) may include a minority union, so long as it is not employer dominated or supported. In the latter connection, Judge Learned Hand noted that "while the original Act was before

Nor is there a basis in any of the Taft-Hartley amendments or their legislative history for the view of the court below that the word "dealing" as used in the statutory definition of labor organization should be construed to mean "bargaining collectively." As already shown, *supra*, pp. 25–28, a proposal to substitute the latter term for the word "dealing," made in 1935 by then Secretary of Labor Perkins, was not adopted and the definition instead was purposely phrased very broadly to include employee representation committees or plans "whether they merely 'deal' or 'adjust' or exist for the purpose of collective bargaining." There was no attempt to change this interpretation in the Taft-Hartley amendments.

Indeed, the sponsors of the amendments made clear that there was no purpose to remove from the definition of "labor organization" and thereby, or in any other way, sanction employer domination or support of employee representation committees such as those involved here. Thus, Senator Taft pointed out, after the Conference Committee had agreed upon the terms of the bill, that Congress had specifically rejected all attempts to "amend * * * the provisions in subsection 8 (2) [of the original Act] relating to company-dominated unions" and had left its prohibitions "un-

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Congress, it struck out from the proviso, as it then was, the clause: 'of their own choosing.' That was done, so far as one can now tell, because it was feared that a 'group' might use a 'company union' as its representative. * * * At any rate the original proviso gave the certified agent no right to appear, not only to protect the agreement if one existed, but—what is far more important—to protest that the whole issue was a covert attempt to infiltrate the influence of a 'company union.' No such possibility any longer exists * * * *" (*ibid.*).

changed." 93 Cong. Rec. 6443; 2 Leg. Hist. (1947) 1539. Similarly, Senator Ball, one of the managers of the amendments in the Senate, stated that the version of the Act ultimately adopted "leaves the provisions of section 8 (a) * * * (2) exactly as they" were in the original Act. 93 Cong. Rec. 4196; 2 Leg. Hist. (1947) 1103. And, finally, the House Conference Report itself declared that "The conference agreement does not make any change" in the definition of "labor organization" which both the House and the Senate proposals had taken over from the Wagner Act (No. 510, 80th Cong., 1st Sess., p. 33; 1 Leg. Hist. (1947) 537). In view of these positive disclaimers of any legislative intent to change the definition of labor organization or relax the prohibitions of Section 8 (2) of the original Act (now Section 8 (a) (2)), there is no warrant for assuming, as the court below did, that Congress made a change in the definition by indirection.

The argument is made that to hold that committees of the type involved here are labor organizations would bar employers and employees from discussing matters of mutual interest concerning the employment relationship. The short answer to this contention is that the Board's ruling does not interpose such a bar; it merely precludes the employer from supporting, dominating or interfering with such an organization. Provided that the employer does not engage in such conduct, which the statute forbids, the employees are free, subject to qualifications not here relevant (see nn. 20, 21 *supra*, p. 37), to establish such committees and through them deal with their employer.

The Courts of Appeals for the First, Second, Sixth and Seventh Circuits have interpreted the statute subsequent to the Taft-Hartley amendments as applying to committees similar to those here involved.[22] Except for the holding of the court below, there are no contrary rulings.

CONCLUSION

For the reasons stated, the judgment of the court below should be reversed and the case should be remanded with directions to enforce the Board's order.

Respectfully submitted.

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[22] *National Labor Relations Board* v. *Standard Coil Products Co.*, 224 F. 2d 465, 468–469 (C. A. 1), certiorari denied, 350 U. S. 902; *National Labor Relations Board* v. *Stow Mfg. Co.*, 217 F. 2d 900, 903–904 (C. A. 2), certiorari denied, 348 U. S. 964; *National Labor Relations Board* v. *General Shoe Corp.*, 192 F. 2d 504, 507 (C. A. 6); *National Labor Relations Board* v. *Sharples Chemicals, Inc.*, 209 F. 2d 645, 652 (C. A. 6); *Indiana Metal Products Corp.* v. *National Labor Relations Board*, 202 F. 2d 613, 621 (C. A. 7); *Harrison Sheet Steel Co.* v. *National Labor Relations Board*, 194 F. 2d 407, 410 (C. A. 7), enforcing 94 N. L. R. B. 81, 83, 90; *Pacemaker Corp* v. *National Labor Relations Board* (C. A. 7), decided November 13, 1958, 43 L. R. R. M. 2120 (where the Seventh Circuit expressly disagreed with the ruling below).

APPENDIX

Between October 1954 and the date of the hearing, the Employee Committees dealt with management in regard to the following matters, among others:

1. *The Canal Plant*

October 11, 12, 1954__	Complaint about deviation from seniority in the appointment of a boiler fireman and request that the latter be removed; Company proposed to "change [its] policy of job bidding, as requested by plant committee"; "proposal was accepted by the plant committee" (R. 53; RII. 19, 21–22, 53, 339).
October 11, 12, 1954__	Canal Employees express preference for Plant seniority; request referred to Pampa office for decision (R. 53; RII. 20, 53–54, 341, 357, 390, 469–470; RIII. 480).
November 21, 1954___	Complaint about maintenance foreman (R. 53; RII. 29, 344, 362; RIII. 481).
January 19, 1955_____	Employees suggested air vents for warehouses; employer promised they would be installed (R. 53; RII. 33, 35, 345–346; RIII. 482).

February 16, 1955.... Employer grants request that gloves for employees be furnished at cost through supply room (R. 53; RII. 35; RIII. 477–479).

April 13, 1955..... Complaint as to merit system (R. 53; RII. 38).

June 1, 1955..... Joint determination not to change job bidding under plant seniority (R. 53; RII. 43, 348; RIII. 473).

July 27, 1955..... Request for additional classifications of employees (R. 53; RII. 45, 349; RIII. 474).

September 13, 1955... Discussion as to whether employees would prefer wage increases or sick leave plan (R. 53; RII. 48, 349–350, 352, 359; RIII. 474–475, 482–483).

October 13, 1955..... Wage increase announced; desirability of changes in seniority and job posting policies discussed (R. 53; RII. 50–51).

October 13, 1955..... Transportation for overtime workers proposed (R. 53; RII. 51).

2. *The Dixon Plant*

February 26, 1953.... Employees requested more lockers, improved laundry methods, and investigation of water purity; employer promises to remedy (RII. 124; RIII. 570–572).

June 10, 1956_____ Employees' request for knee pads granted; more job classifications requested and painter job classification granted (RII. 125; RIII. 572).

June 1956_____ Tow motor classification and reel light above trouble spots requested (R. 53; RIII. 577).

3. *The Kermit Plant*

1956_____ Employee complaint under merit system investigated (R. 54; RIII. 555).

4. *The Mills R & D Plant*

April 8, 1955_____ Employees suggested longer notice for jobs up for bid; employer agreed (R. 54; RII. 95–96; RIII. 743–744).

May 10, 1955_____ Abandonment of time cards discussed and subsequently voted by employees; polling of employees regarding working early on week-ends discussed (R. 54; RII. 99; RIII. 745–746, 804, 821–823).

May 12, 1955_____ Work on Memorial Day poll suggested (R. 54; RII. 99; RIII. 746).

August 5, 1955_____ Employees request availability of overtime records; work on Labor Day discussed (R. 54; RII. 102; RIII. 750).

September 28, 1955___ Return of working foreman to rank and file classification discussed and agreed upon (R. 54; RII. 104; RIII. 753, 772).

September 29, 1955___ Discussion of wage correction (R. 54; RIII. 815–816, 826).

December 2, 1955_____ Poll agreed upon for holiday work schedule; privilege of reporting to work early requested and granted (R. 54; RII. 109; RIII. 803–805).

January 6, 1956_____ Job bidding for classification of apprentice engineer requested and discussed (R. 54; RII. 112; RIII. 779).

March 2, 1956_____ Allocation of overtime to employees requested and discussed (R. 54; RII. 114; RIII. 760–761, 775–777).

April 6, 1956_____ Complaint about rubber lab curing time carrying over on Saturdays adjusted (R. 54; RII. 117; RIII. 815, 824).

May 10, 1956_____ Poll as to work on Memorial Day agreed upon (R. 54; RII. 123).

5. *The Estes Plant*

March 15-16, 1956____ Christmas vacation, distribution of company bonuses, make-up time, job classifications, septic tank improvements discussed (R. 54; RII. 127; RIII. 598–603, 606–609).

6. *The Schafer Laboratory*

1955–1956	Overtime pay and job bidding discussed (R. 54; RIII. 843–844).

7. *The Walton Plant*

January 12, 1956	Grievances regarding days off for tour men discussed (R. 54; RII. 130; RIII. 636–637).
January 14, 1956	Interpretation of company policy pertaining to seniority, promotions, transfers, etc., discussed (R. 54; RII. 131; RIII. 636–639, 644–646, 649–650, 707–708).

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